



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Date: DEC 4 2000

File: WAC-96-037-51658 Office: California Service Center

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data removed to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean
Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was initially approved by the Director, California Service Center. On further review of the record, it was found that the beneficiary was not eligible for the benefit sought. Accordingly, on August 4, 1998, the director served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and ultimately revoked the approval of the petition on October 21, 1998. The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration.

The appeal was properly filed on November 20, 1998, 30 days after the decision was rendered. 8 C.F.R. 205.2(d) states that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. It is noted that the notice of revocation erroneously stated that the petitioner could file an appeal within 30 days. Nevertheless, the director's error does not supersede the pertinent regulations.

8 C.F.R. 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2), or the requirements of a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

8 C.F.R. 103.5(a)(3) requires that a motion to reconsider state the reasons for reconsideration. On appeal, counsel stated that the "Service failed to inform the petitioner the reasons for denial/revocation of the petition." Pursuant to 8 C.F.R. 103.2(b)(2), the notice of intent to revoke must include a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence (e.g., information obtained during the beneficiary's adjustment interview). See Matter of Estime, 19 I&N Dec. 450 (BIA 1987). Review of the record indicates that the notice of intent to revoke merely stated that "the beneficiary does not qualify for the classification granted."

According to 8 C.F.R. 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. Because, in this case, the disputed decision was rendered by the director, the AAU has no jurisdiction over this motion and the case must be remanded to the director for a decision pursuant to the regulations governing motions to reopen.

ORDER: The petition is remanded to the director for further action in accordance with the foregoing.